THE BAR of NORTHERN IRELAND

CHIEF EXECUTIVE

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Sent via email: committee.justice@niassembly.gov.uk

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Dear Christine

Domestic Abuse and Family Proceedings Bill

Thankyou for your correspondence dated 28 July in relation to the Bar's evidence to the Justice Committee on the Domestic Abuse and Family Proceedings Bill.

The Bar notes the evidence subsequently provided by the NI Human Rights Commission which recommended that Clause 5 of the Bill should be further extended to include live-in carers in private homes and guardians. We recognise that the NIHRC believes that this should be widened to capture individuals living together without the need for any form of intimate relationship in an effort to offer protection to a wider range of individuals. However, the Bar is still of the view that Clause 5 is already sufficiently broad and that it should not be further extended to include these individuals as personal connections for the purposes for clause 5.

We would reiterate that there is a risk that a very broad spectrum of scenarios involving disagreements between individuals could be unintentionally criminalised given that the Bill is not restricted to partners and ex-partners as is the case in Scotland under the Domestic Abuse (Scotland) Act 2018 which the rest of the Bill largely mirrors. The draft Bill in its current format takes what constitutes abusive behaviour under the Scottish legislation and the low level of psychological harm required for an offence restricted only to partners and ex-partners and merges it with the wide ambit of the Serious Crime Act 2015 in England and Wales for a whole range of personal connections.

In relation to clause 15(4)(d) on sentencing aggravation by reason of involving domestic abuse, we take the view that the requirement to indicate precisely how the offence affected the sentence is not necessary as it could disturb the judiciary's carefully weighted

assessment as to the starting point of a sentence in any case involving domestic abuse as an aggravating factor. It will also remain important for the sentencing judge to be able to have the flexibility and discretion to depart from any guidelines based on the circumstances of an individual case and where there are justifiable reasons for doing so.

We would point to current legislation in relation to offences motivated by hostility, such as The Criminal Justice (No. 2) (Northern Ireland) Order 2004 which requires judges to state in open court that an offence was so aggravated on sentencing. However, this does not currently extend to requiring the judge to say publicly what the appropriate sentence would have been without the aggravation. However, sentencing guidelines in England and Wales from the Sentencing Council are more prescriptive on this point in relation to sections 145-146 of the Criminal Justice Act 2003 and require that "the sentencer must state in open court that the offence was aggravated by reason of race, religion, disability, sexual orientation or transgender identity and the sentencer should state what the sentence would have been without that element of aggravation". However, it is worth noting that this is guidance rather than a legislative requirement.

Similar legislation in Scotland under section 96(5)(d) of the Crime and Disorder Act 1998 places a statutory requirement on courts to state "(i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or (ii) otherwise, the reasons for there being no such difference". Meanwhile in looking specifically at domestic abuse, section 5(7)(d) of the Domestic Abuse (Scotland) Act 2018 on aggravation in relation to a child also places a requirement on the courts to state "(i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or (ii) otherwise, the reasons for there being no such difference".

The Bar appreciates that it is a challenging issue and a further consideration by the Committee could be the view of the victim. For example, if a judge indicated that they would have imposed a nine month sentence but as it was aggravated by domestic abuse it will be increased to ten months, the victim may focus on the one month increase and feel that this was disproportionate to the abuse, whereas the victim may have a more positive view of a pronouncement of a nine month sentence where a judge has simply indicated that it was aggravated by domestic violence.

The Committee may also be interested in a new report published by the Ministry of Justice in England and Wales on 'Assessing Risk of Harm to Children and Parents in Private Law Children Cases' in June 2020. The Bar would be very happy to engage further with the

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Committee, Department of Justice and Department of Health on issues around family private law cases involving contact and residence applications in which domestic abuse is a concern.

If I can be of any further assistance in this matter at this time, please do not hesitate to contact me.

Yours sincerely,

David Mulholland
Chief Executive